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**OFFICE OF PETITIONS**

In re Patent No. 7,213,138 :  
Fukunaga et al. : LETTER REGARDING PATENT  
Issue Date: May 1, 2007 : TERM ADJUSTMENT  
Application No. 09/025,133 :  
Filed: February 17, 1998<sup>1</sup> :  
Attorney Docket No. 862.2136 :

This letter is in response to the "COMMENTS ON DETERMINATION OF PATENT TERM ADJUSTMENT," filed June 25, 2007. Patentee requests that the determination of patent term adjustment under 35 U.S.C. § 154(b) be reviewed for accuracy.

The request for review of the determination of patent term adjustment is dismissed.

On June 25, 2007, patentee submitted the instant comment. On May 1, 2007, the above-identified application matured into U.S. Patent No. 7,213,138, with a patent term adjustment of 123 days. Patentee asserts that a review of the PAIR Database appears to indicate that the Office determined an incorrect number of days for Office delay and/or patentee's delay. Specifically, patentee directs the Office's attention to the period of adjustment of 14 days pursuant to 37 CFR 1.702(b).

A review of the application history supports a conclusion that the number of days adjusted for Office delay and the number of days reduced for patentee's delay was correct.

In this instance, patentee filed a request for continued examination (RCE) on May 28, 2004. Thus, the RCE cuts-off the ability to accumulate additional patent term adjustment against

<sup>1</sup> The instant application became eligible for patent term adjustment due to examination delay by virtue of the filing of a CPA on May 14, 2001.

the three-year pendency provision, but does not otherwise effect patent term adjustment. Accordingly, the period of adjustment under 37 CFR 1.702(b) was correctly determined as 14 days, counting the number of days beginning on May 15, 2004, and ending on May 28, 2004. See 37 CFR 1.703(b)(1).

In view thereof, the patent term adjustment remains 123 days.

As this letter was submitted as an advisement to the Office of an error in patentee's favor, the Office will not assess the \$200.00 fee under 37 CFR 1.18(e). The Office thanks patentee for their good faith and candor in bringing this to the attention of the Office. Patentee continues to be under a duty to advise the Office of any error in according too much patent term adjustment.

Telephone inquiries specific to this matter should be directed to Christina Tartera Donnell, Senior Petitions Attorney, at (571) 272-3211.



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